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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

METAPLATFORMS, INC.,

Moving Party,

v.

SNAP INC.,

Responding Party.

**Misc. Case No.  
2:22-mc-00146-PA-AGRx**

Underlying action in United States  
District Court for the District of  
Columbia, No. 1:20-cv-03590-JEB

**META PLATFORMS, INC.'S  
SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF ITS MOTION TO  
COMPEL AND OPPOSITION TO  
SNAP INC.'S CROSS-MOTION TO  
QUASH**

Judge: Hon. Alicia G. Rosenberg  
Hearing Date: September 13, 2022  
Time: 11:00 a.m.  
Location: Courtroom 550  
Roybal Federal Building and United  
States Courthouse

**[REDACTED VERSION OF DOCUMENT PROPOSED  
TO BE FILED UNDER SEAL]**

Meta seeks relevant and necessary discovery from Snap – the only significant competitor the FTC alleges (wrongly) that Meta has. While “recogniz[ing] that it will need to provide some additional discovery” here, *FTC Joint Statement* (“J.S.”) at 60, Dkt. 1-1, Snap has stonewalled and delayed. Snap provided a take-it-or-leave-it offer to produce a handful of documents, subject to numerous inappropriate conditions, including a new protective order and Meta paying its fees. This offer did not include the vast majority of documents Meta needs to defend itself, and included no customary custodial searches for relevant emails and documents.

While not a party to this litigation, Snap is interested in its outcome, and its steadfast refusal to cooperate in discovery only bolsters that fact. Snap [REDACTED], J.S. at 44, and for years has been [REDACTED] [REDACTED] Decl. of Ana N. Paul (Aug. 30, 2022), Ex. AG [REDACTED] [REDACTED]. If Snap’s interest was in doubt, its *prompt* compliance with the FTC’s extensive subpoena erases it. Snap Transfer Opp. at 11, Dkt. 50.

The Court should not quash the subpoena and send the parties back to square one. J.S. 54-60. Meta served the subpoena six months ago, and already dropped 23 requests and narrowed 25 others. The remaining requests are targeted and necessary. The Court should order Snap to produce the highly relevant documents Meta seeks.

#### **I. Snap Has Not Shown That Meta Seeks Its Trade Secrets**

Snap argues (at 75) that the subpoena should be quashed because Meta has not shown a substantial need for Snap’s most confidential information. The “substantial need” standard applies only if Snap carries its initial burden of making a “strong showing” that the requests seek actual “trade secrets” or “confidential . . . commercial information” (referred to herein as “trade secrets”). Fed. R. Civ. P. 45(d)(3)(B)(i); *Nguyen v. Lotus By Johnny Dung Inc.*, 2019 WL 4570032, at \*4 (C.D. Cal. Apr. 12, 2019). Snap must establish (1) the information is a trade secret,

1 and (2) its disclosure would *presently harm* Snap. *See RG Abrams Ins. v. Law*  
 2 *Offices of C.R. Abrams*, 2021 WL 4974618, at \*8 (C.D. Cal. July 14, 2021).

3 Snap “must first *demonstrate by competent evidence*” – i.e., affidavits or  
 4 declarations, not just “general assertions” – the information is a trade secret.  
 5 *Heredia v. Sunrise Senior Living LLC*, 2020 WL 3108699, at \*4-5 (C.D. Cal. Jan.  
 6 31, 2020) (emphasis added). Courts routinely reject generic invocations of trade  
 7 secrets without any evidence substantiating the claim. *See, e.g., Nguyen*, 2019 WL  
 8 4570032, at \*4; *Nat’l Acad. of Recording Arts & Scis., Inc. v. On Point Events, LP*,  
 9 256 F.R.D. 678, 683 (C.D. Cal. 2009) (rejecting trade-secret claim because  
 10 “defendant has not presented any declarations from its officers or employees  
 11 supporting its claim that the information sought . . . is a ‘trade secret’”); *Hill v.*  
 12 *Eddie Bauer*, 242 F.R.D. 556, 561-62 (C.D. Cal. 2007) (same); *Heredia*, 2020 WL  
 13 3108699, at \*4 (same); *RG Abrams*, 2021 WL 4974618, at \*8 (same).<sup>1</sup>

14 Snap asserts trade secret status for only two of 37 requests (RFPs 36 and  
 15 23(c)), and has not substantiated those assertions.<sup>2</sup> Snap’s conclusory claims that  
 16 the subpoena generally seeks trade secrets fail to make a “strong showing” that any  
 17 *specific* request seeks any *specific* trade-secret information. It has offered *no*  
 18 competent evidence supporting its claim of trade secrets – despite its submission of  
 19 declarations (flawed for other reasons) regarding burden. *See Eddie Bauer*, 242  
 20 F.R.D. at 562 n.7 (failure to provide trade-secret evidence “particularly glaring since  
 21 [party] filed several declarations . . . [regarding] the burden[.]” of requests).

22 Snap instead argues (at 75) it is exempt from *proving* trade-secret status

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24 <sup>1</sup> Countless other courts do so as well. *See, e.g., In re Ambercroft Trading*  
 25 *Ltd.*, 2018 WL 4773187, at \*9 (N.D. Cal. Oct. 3, 2018); *In re Rail Freight Fuel*  
*Surcharge Antitrust Litig.*, 2010 WL 11613859, at \*3 (D.D.C. Sept. 9, 2010).

26 <sup>2</sup> Snap identifies, in bullet form in an introduction section, five requests (RFPs  
 27 4, 7, 20, 23, 26) that (supposedly) “obviously” contain trade secrets, but makes no  
 28 request-specific arguments. It never includes *any* RFP-23-specific discussion in the  
 argument section – thus waiving any challenge (on any topic) to RFP 23.

1 because it is “obvious” “Meta seeks confidential mater [sic].” This is a conclusory  
 2 argument courts routinely reject. *E.g.*, *Nat’l Acad.*, 256 F.R.D. at 683 (“Without any  
 3 declarations to support its confidentiality claim, the Court cannot simply assume  
 4 defendant keeps this information confidential.”); *U.S. Interloc Matting. v. Macro*  
 5 *Plastics*, 2017 WL 9565569, at \*3 (E.D. Cal. Nov. 14, 2017) (“vague and  
 6 conclusory allegations . . . do not provide any specific argument or evidence to  
 7 allow the court to determine . . . if . . . documents contain trade secrets”). Indeed, in  
 8 all the cases Snap cites (at 76-77) to support its position that the material requested  
 9 is “obviously” confidential, the party alleging trade secrets provided declarations  
 10 from employees explaining the confidential nature of the information requested.

11 Even if some requests implicate trade secrets (something Snap has not  
 12 shown), it is clear most do not. For example, responding to Meta’s request for  
 13 information 10 and 8 years old would inflict no *present* harm to Snap. *See, e.g.*, *In*  
 14 *re McKesson Gov’t Entities Average Wholesale Price Litig.*, 264 F.R.D. 595, 602-03  
 15 (N.D. Cal. 2009) (no trade secret protection for five-year-old pricing information);  
 16 *United States v. Exxon Corp.*, 94 F.R.D. 250, 251-52 (D.D.C. 1981) (similar). It is  
 17 Snap’s job, not the Court’s, to identify which requests, and which specific  
 18 documents in response, implicate trade secrets. It has not done so.

## 19 **II. Meta Has Substantial Need for These Highly Relevant Documents**

20 Even if Snap had identified specific trade secrets (it has not), Meta has  
 21 substantial need for Snap’s assessments of competition with Meta and others for  
 22 user time and attention. This discovery is critical to Meta’s defense that there is no  
 23 “industry or public recognition” of the alleged market. *Brown Shoe Co. v. United*  
 24 *States*, 370 U.S. 294, 325 (1962). The FTC alleges Snap is Meta’s only significant  
 25 PSNS competitor. Snap’s internal documents on who it competes with are critical to  
 26 dispute this. If these documents demonstrate that Snap competes with not just Meta,  
 27 but also, for example, TikTok, the FTC’s market definition collapses.

28 Snap misconstrues *Brown Shoe*, arguing (at 96) that “[n]one of Meta’s

1 document requests ask for documents recognizing PSNS as a separate economic  
 2 entity.” The FTC invented the PSNS market – as far as Meta is aware, no one in the  
 3 industry uses the term. Meta necessarily seeks Snap’s view of the market *beyond*  
 4 just the FTC’s artificial PSNS construct in order to disprove its existence.

5 Elsewhere, Snap claims that Meta seeks to “co-opt the Court into drafting  
 6 discovery.” J.S. at 63. Not so. *Before* moving to compel, Meta agreed in writing to  
 7 narrow its requests, while Snap refused to negotiate (*id.* at 25-26); Meta asks the  
 8 Court not to “rewrite” its requests (*id.* at 63), but to order Snap to comply with them.

9 Snap also resists providing customary custodial searches for emails and  
 10 documents. For example, it argues (at 98) “there is no reason to think that ‘informal  
 11 communications’” found in emails “would be more probative of the *Brown Shoe*  
 12 ‘industry recognition’ than the presentations upon which Snap actually bases its  
 13 decisions.” Relevance does not turn on what Snap views as the best evidence;  
 14 requests are relevant “unless the information sought has no conceivable bearing on  
 15 the case.” *Poturich v. Allstate Ins.*, 2015 WL 12766048, at \*2 (C.D. Cal. Aug. 11,  
 16 2015). And, email evidence is relevant – courts in antitrust cases consider emails all  
 17 the time, *see* J.S. at 49 & n.27, 89 (collecting cases), and parties in antitrust cases  
 18 routinely produce them, *id.* at 58, 88-89 (collecting examples). *See also, e.g., In re*  
 19 *EpiPen Mktg., Sales Practice & Antitrust Litig.*, 2018 WL 3240981, at \*3 (D. Kan.  
 20 July 3, 2018) (ordering production of emails that might “reveal direct internal  
 21 communications not found elsewhere”). The types of candid statements often found  
 22 in email could be particularly important to understanding Snap’s view of the market  
 23 and competition – particularly in this dynamic technology market, where new  
 24 developments are often documented in contemporaneous email correspondence.

### 25 **III. Snap Has Failed To Prove Any Burden**

26 Snap has not said *anything* about burden for the vast majority of Meta’s  
 27 requests. Snap must support its claim of burden with “affidavits or other evidence  
 28 showing the exact nature of the burden.” *Blagman v. Apple*, 2014 WL 12607841, at

1 \*3 (C.D. Cal. Jan. 6, 2014). “‘*Ipse dixit*’ and ‘counsel’s mere say-so’ do not  
 2 suffice.” *Doe v. Wesleyan Univ.*, 2021 WL 4704852, at \*7 (D. Conn. Oct. 8, 2021).

3 For 13 requests, Snap simply makes *no* burden argument.<sup>3</sup> For all but four of  
 4 the rest,<sup>4</sup> Snap offers no proof of its burden, and instead makes only general and  
 5 conclusory arguments based on its counsel’s say-so. For example, Snap’s burden  
 6 arguments for RFPs 1, 60, and 61 state only that “locating and producing such  
 7 documents would obviously not be burden-free,” with no elaboration or citation.  
 8 J.S. at 115. That is insufficient. *See State Farm Mut. Auto. Ins. v. Elite Health*  
 9 *Ctrs., Inc.*, 364 F. Supp. 3d 758, 766-67 (E.D. Mich. 2018); *In re Apple iPhone*  
 10 *Antitrust Litig.*, 2021 WL 718650, at \*2 (N.D. Cal. Feb. 24, 2021).

11 Snap offers evidence of the alleged burden for only four of Meta’s data  
 12 requests. But as explained, J.S. at 109, 151, those affidavits either fail to establish a  
 13 significant burden or respond to requests Meta is not making.

14 Snap tries to overcome its failure to offer specific evidence regarding burden  
 15 by repeating that the Court must consider the subpoena’s “cumulative” burden. But,  
 16 it is impossible to evaluate the “holistic burden” of Meta’s subpoena because Snap  
 17 made no effort to specify the individual burden of most of the requests, even as  
 18 Meta narrowed the subpoena. Snap did no work to elaborate its burden, not even  
 19 attempting to estimate the time and cost to review responsive hits based on its own  
 20 custodians and search terms. It is no answer to assert (as Snap does) that it would be  
 21 burdensome to assess burden. *See Stati v. Rep. of Kazakhstan*, 2020 WL 3259244,  
 22 at \*9 (D.D.C. June 5, 2020) (non-party failed to establish burden without “actually  
 23 conduct[ing] a preliminary search”); *State Farm*, 364 F. Supp. 3d at 767 (party  
 24 responding should “[b]e prepared to support allegations of undue burden with  
 25 detailed cost and time calculations, supported by knowledgeable declarations”).  
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27 <sup>3</sup> RFPs 6, 7, 10, 14, 15, 16, 22(a), 23, 36, 43, 47, and 53.

28 <sup>4</sup> RFPs 1, 2, 4, 9, 12, 13, 18, 19, 20, 21, 26, 38, 39, 40, 41, 48, 49, 58, 60, 61.



1 DATED: August 30, 2022

Respectfully submitted,

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